

**(UNREDACTED)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 13-20067
	)	
ROBERT DREW,	)	
	)	
Defendant.	)	

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A P P E A R A N C E S

Appearing on behalf of the Plaintiff:

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Appearing on behalf of the Defendant:

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BY: MARY C. JERMANN-ROBINSON  
NEDDUM L. GERMANY, III  
ASSISTANT FEDERAL DEFENDERS

W I T N E S S I N D E X

WITNESS

PAGE

LINE

NO WITNESSES

E X H I B I T I N D E X

<u>EXHIBIT NUMBER</u>	<u>PAGE</u>	<u>LINE</u>
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NO EXHIBITS

**MONDAY MORNING**

**APRIL 21, 2014**

The trial of this case began on this date, Monday, April 21, 2014, at 9:30 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

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**THE COURT:** All right. Just for the record, this is the United States versus Robert Drew, Indictment Number 13-20076, set today for trial.

Are both sides ready to proceed?

**MR. BIGGERS:** The government is ready to proceed, Your Honor.

**THE COURT:** All right, thank you.

**MS. JERMANN-ROBINSON:** Yes, Your Honor.

**THE COURT:** All right. The jury is outside, it is set for jury trial today.

I don't know, I know Mr. Biggers has tried a case in here, I --

**MS. JERMANN-ROBINSON:** I have not.

**THE COURT:** Okay, Ms. Robinson has not. I can't remember about Mr. Germany, I know

1 Mr. Stringfellow has not.

2           Okay. Just a couple of things, when we  
3 call them I have some preliminary things that I go  
4 over with jurors, it's nothing out of the ordinary,  
5 I talk with them, let them know what the charge is,  
6 about how long the case is going to take to try, our  
7 daily work, you know, how late we're going to work,  
8 go over the indictment, the fact that is the  
9 charging instrument notice, presumption of  
10 innocence, I talk with them very briefly about that,  
11 that presumption of innocence leads into the burden  
12 of proof, it being on the government. And that the  
13 defendant has no burden whatsoever, doesn't have to  
14 testify, all of things.

15           Take a little bit about witnesses and  
16 exhibits and what their job is basically to  
17 determine the facts and apply the law. The law, of  
18 course, is what I give them. And at the end the  
19 final 12 will have to determine whether or not the  
20 defendant is guilty.

21           As I say, those are things that I normally  
22 go over with the jury panel prior to us getting  
23 started.

24           Now the way we will select them, after  
25 they have -- after they are sworn, Mr. Herrin will

1 swear the jury. We will call 18 jurors, we'll start  
2 filling the box back row from right to left, my  
3 right to left, be six in the back, six in the next  
4 row, and then finally six in the row in front.

5 I will get preliminary information from  
6 them, marital status, kids, where they're working,  
7 how long, just briefly what they do, things like  
8 what part of the district do they live in, I won't  
9 ask for addresses or anything like that, but if they  
10 live in north Memphis, east Memphis, you know,  
11 Millington, whatever.

12 Afterwards both sides obviously will get  
13 an opportunity to voir dire the jury.

14 During my preliminaries there will be an  
15 opportunity for both sides to introduce themselves,  
16 also the defense, if you choose, can introduce  
17 Mr. -- Mr. Drew.

18 When we're putting on proof, basically I  
19 give both sides two shots at the witnesses, it will  
20 be direct and cross. Assuming there is redirect, I  
21 will allow recross, but after that we're done and I  
22 will excuse the witness.

23 I can't think of anything else at this time  
24 but, if there are any questions, just don't  
25 hesitate, just let me know and we'll deal with them.

1                   **MS. JERMANN-ROBINSON:** Thank you, Your  
2 Honor.

3                   We're a long way from there right now, but  
4 do you charge the jury after we close or before?

5                   **THE COURT:** I charge the jury after you  
6 close.

7                   **MS. JERMANN-ROBINSON:** Okay.

8                   **THE COURT:** We will have a conference and  
9 go over the jury charge so you will have it, you  
10 will know what I'm going to charge and all the  
11 lawyers will get a copy of that and we'll hash it  
12 out and make sure we deal with all the problems if  
13 there are objections. But then both sides will  
14 argue, depending on how the proof goes will dictate  
15 to me whether or not there will be a time limit as  
16 far as closings are concerned, and afterwards then I  
17 will go straight into the charge.

18                   Okay. Anything else?

19                   **MS. JERMANN-ROBINSON:** One other thing,  
20 Your Honor.

21                   On Tuesday, tomorrow evening, I'm having  
22 some child pickup issues with my stepson. I don't  
23 know how late we'll work, but I need to pick him up,  
24 it's not far from here, only ten minutes from here,  
25 about six or a little before six o'clock.



1           **THE COURT:** All right. Remind me of that  
2           sometime tomorrow afternoon.

3           **MS. JERMANN-ROBINSON:** I will.

4           **THE COURT:** Because normally now that we  
5           are in longer days, I normally work until about six  
6           o'clock or that time. So if you need to get out of  
7           here 5:30, that's not a problem, but remind. Okay.

8           **MS. JERMANN-ROBINSON:** Thank you, Your  
9           Honor.

10          **THE COURT:** Unless there's anything else?  
11          Mr. Biggers.

12          **MR. BIGGERS:** Just briefly, dealing with  
13          the scheduling issues, we have one witness who is  
14          scheduled -- slated to testify towards the latter  
15          part of the government's proof.

16          **THE COURT:** Uh-huh.

17          **MR. BIGGERS:** If for some reason we go  
18          quicker than expected, that witness cannot be here  
19          on Wednesday morning, the witness has to testify  
20          either tomorrow or Wednesday afternoon after two  
21          o'clock.

22          **THE COURT:** I don't think that will be a  
23          problem.

24                 I think all of you know, and just in case  
25          if you don't know, we're only working half a day

1 today, I picked up a speaking engagement I couldn't  
2 get out of, and so we're going to break for lunch  
3 around 12:30, be done for the day. Even if we were  
4 by some stretch to get a jury before then, there  
5 will be no proof today. Okay. We will pick it up  
6 tomorrow morning. I do have a couple of brief  
7 matters, I think, at nine o'clock, so at 9:30  
8 tomorrow we should be able to get back to it and  
9 work the entire day. Of course, we will take into  
10 account when we leave.

11 And then on Wednesday I do have a couple  
12 of matters, like I say, in the morning, but, you  
13 know, we should be able to get just about a full  
14 day's work on Wednesday. So we will be able to  
15 accommodate. Okay.

16 Unless there's anything else?

17 Okay. Let go ahead and get started, let's  
18 bring in the jurors.

19 You all may be seated, they're standing  
20 for you.

21 (Jury Panel present at 10:04 a.m.)

22 **THE COURT:** All right. Good morning,  
23 ladies and gentlemen.

24 That wasn't too bad, I know you are not  
25 too happy about being here, but I appreciate you

1 coming down and doing your duty as jurors today.

2 I want to welcome each and everyone of you  
3 here to Division III of Federal District Court.  
4 This is Courtroom Number III. I just want to make  
5 sure everybody is where they are supposed to be  
6 today.

7 My name is John Fowlkes, and I'm judge of  
8 this division of court. Last week I had my clerk,  
9 Mr. Herrin here, call the jury commissioner, ask  
10 that he call some jurors, a jury panel, to come down  
11 here today and help me deal with a matter that's on  
12 my calendar for trial. And so you are the lucky  
13 ones who will be working with us over the next few  
14 days to deal with this case.

15 There's just a couple of thing's I need to  
16 make you aware of before we even get started in the  
17 case.

18 There are certain times when I have to  
19 give potential jurors, as well as the final jurors,  
20 instructions in the case. Now sometimes those  
21 instructions are written, I have to actually read  
22 them to you. Sometimes those instructions are oral.  
23 In other words, I have to talk with you and -- and  
24 give you instructions, you know, orally as I'm doing  
25 right now. And so I ask all of you if you would,

1 please, to pay close attention to the things that I  
2 am saying because that will help us speed through  
3 this whole process just a little faster. Okay.

4 Let me talk with you about how long I  
5 anticipate the case is going to go and our schedule.  
6 We're getting started a decent time today, about ten  
7 o'clock, we usually get started earlier than that.  
8 Today I had some preliminary things that I had to  
9 workout with the parties.

10 Today, though, we're only going to work a  
11 half day, and that is my fault, I got corralled into  
12 a speaking engagement out at the University of  
13 Memphis this afternoon, and so we're going to work  
14 until about 12:30 today and then come back and pick  
15 up fresh tomorrow morning and keep moving forward.  
16 Tomorrow morning we will get started at 9:30, I will  
17 talk about that in a little more detail shortly.  
18 Okay. Ask that you be prompt, and we'll give you  
19 instructions on where to go in the morning, things  
20 like that.

21 And now the type of case that we're going  
22 to be dealing with today -- oh, I also needed to let  
23 you know we will work usually until about six  
24 o'clock in the evening. If that turns into a  
25 significant problem for anyone, when we go through

1 this jury selection process, there will be a time  
2 when you can let us know if that's a real problem.  
3 Sometimes it will be a little earlier than six  
4 o'clock, maybe a little later, but it depends on the  
5 circumstances.

6 Now the type of case that we have here,  
7 I'm just going to go over briefly the charges that  
8 are set out in the indictment and then I will talk  
9 with you in just a minute or two in a little more  
10 detail about the indictment and about what it is and  
11 what it isn't, things of that nature.

12 But before we do that, there is one other  
13 thing that I have to take care of. If you would,  
14 please, listen to me carefully. I would like for  
15 everyone to reach into their purses, pockets, maybe  
16 on their belt and pull out those handheld computer  
17 devices, also known as cell phones. If you have  
18 one, please take it out now. Hold it up so that I  
19 can see it.

20 Okay. Looks like most people were pretty  
21 good about turning them off when you came in the  
22 courtroom. I just like to double-check that. Okay  
23 you can put them down.

24 If your unit is on, please use the on/off  
25 switch right now and turn it off. Vibrate isn't

1 good enough. Silent isn't good enough. It should  
2 be turned off.

3 And I kind of make a big deal about that,  
4 you see, because it may be off now, but when you  
5 leave on a break and come back or lunch or maybe  
6 tomorrow morning, always remember to turn it off.  
7 It's really embarrassing when the Star Spangled  
8 Banner goes off in the courtroom and then you rush  
9 to try to turn that unit off. Okay.

10 Now I say that and I make a big deal about  
11 it, but there's a deeper point that's even more  
12 important, those devices need to be off when you're  
13 dealing with this case because everything that you  
14 need to handle this case you will get here in the  
15 courtroom.

16 Now I will go into a lot more detail about  
17 that later, that it is important that the  
18 information, the evidence, the testimony, everything  
19 that you get in order to handle this case will come  
20 here in the courtroom.

21 In other words, I don't want anyone doing  
22 any outside research or investigation to try to find  
23 out more about this case, everything that you need  
24 to handle this case will happen here in the  
25 courtroom. Okay.

1           Now, the type of case that we have. And  
2 all of our cases, the criminal case's we proceed to  
3 trial with grand jury returns a document that we  
4 call an indictment. An indictment was returned in  
5 this case charging Mr. Robert Drew, the defendant in  
6 this case with five charges. Okay.

7           Count One of the indictment charges him  
8 with attempt to obstruct, delay and affect commerce  
9 by robbery.

10           It's basically an attempt robbery case.

11           Count Two of the indictment charges him  
12 with on a certain date carrying, using and  
13 brandishing a firearm during and in relation --  
14 during and in relation to that crime, the attempt  
15 robbery in Count One.

16           Count Three charges Mr. Drew with being a  
17 convicted felon. At the time of the offense he had  
18 at least one prior offense on his criminal history,  
19 that the conviction exceeded one year, and he  
20 knowingly possessed a firearm.

21           Count Four is another attempt robbery by  
22 commerce.

23           And then Count Five is another use, carry,  
24 brandish a firearm during and in relation to that  
25 crime of -- a crime of violence. There are five

1 charges in the indictment. Okay.

2 Now I hasten to add this, and please  
3 listen to me, an indictment which contain those  
4 charges, basically it -- that's all it is is a  
5 charging instrument. It provides the defendant and  
6 his lawyers with notice of the charges against him.

7 An indictment is not evidence against the  
8 defendant. It only sets out those charges.

9 A defendant, a person who is charged with  
10 an offense is what we call presumed innocent of the  
11 charges.

12 So as Mr. Drew sits here in the courtroom  
13 he is presumed innocent of those charges that I just  
14 outlined for you. Okay. So keep that in mind as we  
15 move forward.

16 The grand jury returned an indictment  
17 against him. It sets out the charges, it provides  
18 the defense with notice of what those charges are.

19 And Mr. Drew is presumed innocent of those  
20 charges.

21 Now you say in your mind, okay, well, he's  
22 been indicted, he's been charged, but he is presumed  
23 innocent, so how do we move forward from this --  
24 from this situation.

25 And then we move forward because there is



1 no inference of guilt from the indictment, and that  
2 presumption of innocence can only be removed in one  
3 way, and that is presentation of proof of guilt.

4 Now the defendant has no obligation to  
5 present anything. He does not have to testify. He  
6 does not have to present any proof at all. The  
7 burden of proof in the case lies with the  
8 government.

9 The representatives of the government, who  
10 you will meet, as well as the defense folks,  
11 shortly, must present evidence to the jury and that  
12 evidence must convince the jury, each individual  
13 jury -- juror of Mr. Drew's guilt of these offenses  
14 beyond reasonable doubt. Okay. And you will hear  
15 that time and time again. The proof must remove any  
16 reasonable doubt.

17 Again, the defendant has no burden of  
18 proof, only the government must present proof to  
19 convince the jurors of his guilt beyond reasonable  
20 doubt. Okay.

21 Now the way we go about presenting proof  
22 is through the testimony of witnesses. Witnesses  
23 will be called, the government has to call  
24 witnesses. The defense doesn't have to, but they  
25 can if they want to.

1           I will place the witnesses under oath.  
2   They will come forward, I will place them under oath  
3   and they will sit in this case right here, the  
4   witness chair, and they will answer questions put to  
5   them by the lawyers. May also introduce photographs  
6   or I don't know what the proof will be in this case,  
7   maybe -- it maybe firearms or things like that, but  
8   they will be introduced through the testimony of  
9   witnesses. And both sides will have an opportunity  
10   to question those witnesses and to deal with those  
11   exhibits.

12           Your job, as jurors, the final 12 jurors,  
13   will be to determine basically the facts, what  
14   happened. And that will be based on the testimony  
15   of the witnesses as well as any exhibits that are  
16   introduced.

17           You will also have to apply the law. The  
18   law comes from me, as I said, either orally or  
19   written instructions, you have to apply the law to  
20   the facts and determine what happened and what the  
21   final verdict will be.

22           I'll tell you right now that the final 12  
23   jurors, their verdict or decision on each count of  
24   the indictment must be unanimous. In other words,  
25   all 12 of the final jurors must agree to that

1 verdict.

2 And that verdict will be whether or not  
3 the defendant is guilty or not guilty of those  
4 offenses.

5 You don't have to worry about any  
6 punishment, the law is that the judge, I, will be  
7 tasked with punishment if there is a guilty verdict  
8 on any of the counts. So the punishment involved is  
9 not your concern. Okay.

10 So keep those things in mind as we move  
11 forward. An indictment was returned charging the  
12 defendant with several violations of federal law.

13 The purpose of the indictment is to give  
14 the defendant and his lawyers notice of what they  
15 are charged with and what they have to defend  
16 against. It is not evidence against the defendant.

17 He is presumed innocent as he sits there  
18 right now and he does not have to present any  
19 witnesses. He does not have to testify.

20 If he decides not to present any evidence  
21 and not to testify, you can't hold that against him.  
22 You can't say to yourself I sure wish he would have  
23 testified, he didn't or he should have presented  
24 some witnesses. Basically you have to make your  
25 decision on the evidence that is presented in the

1 trial.

2 Also, remember that the burden is on the  
3 government to prove each and every element of the  
4 crimes beyond reasonable doubt to your satisfaction.  
5 Okay.

6 As I say, keep those things in mind. The  
7 lawyers will have an opportunity to question you and  
8 they will go into more detail about those things and  
9 other things in just a few minutes.

10 I am going to give both sides an  
11 opportunity to introduce themselves after which I  
12 will tell you how we are going to proceed as far as  
13 jury selection is concerned. You see all of these  
14 empty chairs up here, in just a few minutes they are  
15 good be to filled with potential jurors.

16 But the introductions at this time.

17 First the government.

18 **MR. BIGGERS:** Thank you, Your Honor.

19 Good morning.

20 My name is David Biggers. I'm the  
21 representative of the United States Attorney's  
22 office here in this case.

23 Seated with me at counsel table,  
24 Mr. Samuel Stringfellow. He's also with our office,  
25 he's an attorney that will be prosecuting this case

1 with me.

2 As well as Special Agent Jon Reed, with  
3 the Bureau of Alcohol, Tobacco, Firearms and  
4 Explosives.

5 **THE COURT:** Thank you, Mr. Biggers.

6 And now the defense.

7 **MS. JERMANN-ROBINSON:** Thank you, Your  
8 Honor.

9 Good morning.

10 Mary C. Robinson, I'm lead counsel for the  
11 defendant. The defendant is Robert Drew.

12 And assisting me is Ned Germany.

13 **MR. GERMANY:** Good morning.

14 **THE COURT:** Thank you, Ms. Robinson.

15 Okay. As I said, the lawyers will have an  
16 opportunity in just a few minutes to question you,  
17 and keep those things in mind.

18 Now I would like for you to turn your  
19 attention to the jury box for just a couple of  
20 minutes. As I said, in a few minutes, Mr. Herrin  
21 here, after you all take an oath, he is going to  
22 start calling names and we're going to fill the jury  
23 box up here. There will be 18 names that will be  
24 called and when you hear your name you will come  
25 forward.

1           We will start filling the jury box,  
2 basically there are three rows, and we will start  
3 filling the jury box with the back row. And we will  
4 go, as your name is called, we'll fill it from the  
5 back row starting on the right and working your way  
6 to the left.

7           The first six names that will be called  
8 will fill that back row. You'll see there will be  
9 an empty chair on the left side, that will be for  
10 alternate juror later.

11           As Mr. Herrin continues calling names we  
12 will then beginning filling the next row, the row of  
13 chairs just inside the jury box. Again, from right  
14 to left six jurors will fill those chairs. Again,  
15 when you get down to the left side, there will be an  
16 empty chair there for an alternate juror.

17           Mr. Herrin will continue calling names and  
18 will fill the front row here with six more potential  
19 jurors. And then after he calls the last one, you  
20 will see there will be six, and again filling from  
21 right to left. So there will be plenty of room, we  
22 will be able to get everyone in the jury box or at  
23 the proper location.

24           Now, when you're up there, first I'm going  
25 to have some preliminary questions for you to get

1 some of the preliminary things out of the way.  
2 There's certain information that I have to verify.  
3 I will ask you your marital status, I'll ask you if  
4 you're married, but really it's marital status,  
5 married, separated, divorced, whatever it is.

6 I will ask you number of children,  
7 employment information, where you are working, just  
8 briefly describe what you do on your job. And then  
9 verifying the place in the district where you  
10 reside. I'm not asking for an address, but  
11 basically what part of the district where you  
12 reside. It might be east Memphis or south Memphis,  
13 Frayser, Millington, you know, whatever it is. As I  
14 said, I don't need a specific address or anything  
15 like that.

16 Once I go through everyone and get all of  
17 that preliminary information, I'm going to turn it  
18 over to lawyers. Both sides will have an  
19 opportunity to ask you questions. They are not  
20 trying to pry into your personal lives, but they  
21 know this case, they know the facts. I don't know  
22 it, I'll hear it as you hear it. They know what's  
23 going to come, and they have in their minds certain  
24 types of folks that may be best for this particular  
25 case.

1           And so, if you're not selected to be on  
2 this case, you know, don't get offended or anything  
3 like that, it's just certain things that they may be  
4 looking for. Okay. So keep those things in mind as  
5 we move forward and we will get through this just as  
6 quickly as we can. All right.

7           Now at this time all of you will need to  
8 receive the oath from the clerk. So, if you would,  
9 please, rise. All of the potential jurors rise.  
10 Raise your right hands, receive the oath.

11           **THE CLERK:** Do you and each of you  
12 solemnly swear or affirm the answers to the  
13 questions to be propounded to you by the court in  
14 this case for which you may be drawn as a juror to  
15 be the truth, the whole truth and nothing but the  
16 truth, so help you God?

17           **THE JURY PANEL:** (Responded  
18 affirmatively.)

19           **THE CLERK:** You may be seated.

20           (Voir Dire of the Jury.)

21           (Adjournment at 12:47 p.m.)  
22  
23  
24  
25